WASHINGTON POST
20 February 1985

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The Meaning Of the Libel Trials

Two of the most spectacular libel trials in recent history have now ended, ended with more of a whimper than a bang.

The Westmoreland-CBS serial, which ran in the courts for 4½ months, wound up with the general praising CBS's "distinguished journalistic tradition" and CBS respecting the general's "long and faithful service to his country."

The $50 million Sharon-Time magazine dispute concluded with both sides claiming victory, and the only dollars changing hands were from the clients to the lawyers on each side.

Readers and viewers did learn a few things from the judicial exercises. Contrary to Time's report, a secret Israeli report's Appendix B did not refer to Gen. Ariel Sharon's meeting with the family of the assassinated Phalangist leader, Bashir Gemayel, and second, any implication that in such a discussion Gen. Sharon raised the need for revenge on Palestinian refugees was rejected by a jury.

In the $120 million suit by retired Gen. William C. Westmoreland against the CBS network, it seemed to this reader that the network could not support the use of the word "conspiracy" in describing efforts to underestimate reports of enemy troop strength in Vietnam.

The most that could be proven was that Gen. Westmoreland put a lid on enemy figures because higher numbers were "politically unacceptable." "Conspiracy" suggests a lot more than this.

In my opinion, the Time testimony reveals sloppy journalism, and the magazine should have swallowed its lumps early and publicly. Instead, the unwillingness, I believe, will haunt the magazine, leaving doubts about the magazine's reporting and editing, and reinforcing those who think the media have become a wielder of the arrogance of power.

The CBS report held up better under fire. But as Burton Benjamin, CBS senior executive producer, said in his report, the documentary failed to prove a "conspiracy," represented an "imbalance" and broke several of the network's own fairness rules. I believe the "conspiracy" tag was an effort to hype the program, to suggest it was more than it really was.

It was courageous and professional of CBS to commission the Benjamin staff report, but I would have been more enthusiastic about the corporate response if the executives had pulled back from the "conspiracy" charge publicly and had offered Gen. Westmoreland more than 15 minutes of rebuttal time.

Did the two trials discourage further journalistic efforts to investigate important events, or are we sentenced to reports merely parroting the official (and usually self-serving) line?

It is too early to say, but I can almost visualize a conference in a newspaper office about whether to report on allegations of misconduct (say another Watergate) when the public figure (say a president or attorney general) involved is threatening a multimillion-dollar libel suit. The question is not so much whether the truth can be proved—CBS did prove its major contentions in a proceeding—but whether a publication can afford the heavy legal expense in defending itself. And suppose it is a smaller paper—will the publisher risk the entire enterprise in order to publish the story?

The "safe" course may be to leave such public watchdogging to somebody else. And who loses?

The legal costs in the Westmoreland-CBS case alone have been estimated at between $7 million and $9 million. One may wonder how many more children and adults could have been spared the agony of starvation and disease if the $7 million to $9 million had been used instead to send food to drought-stricken African nations.

A little less haste to sue and a little more speed in acknowledging error could redound to the credit of all concerned.